14.0.0 DIVESTMENT

14.1.0 Introduction

Divestment can affect the eligibility of an institutionalized person. In the application process for MA, if it is determined that divestment occurred some time in the past, the applicant may be found ineligible for MA for a period of time.

The definitions and general rules found in sections 14.2.0 - 14.5.0 apply to all divestments. The special situations in 14.6.0 - 14.13.0, while falling under the same definitions and general rules, require extra treatment because of their complexity.

14.2.0 Definitions

14.2.1 Divestment

"Divestment" is the transfer of income, non-exempt assets, and homestead property (14.2.3.1), which belong to an institutionalized person or his/her spouse or both:

1. For less than the fair market value of the income or asset by:

    a. An institutionalized person, **or**

    b. His/her spouse, **or**

    c. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the institutionalized person or the person's spouse, **or**

    d. A person, including a court or an administrative body, acting at the direction or upon the request of the institutionalized person or the person's spouse. This includes relatives, friends, volunteers, and authorized representatives.

It is also divestment if a person takes an action to avoid receiving income or assets s/he is entitled to. Actions which would cause income or assets not to be received include:

1. Irrevocably waiving pension income.
2. Disclaiming an inheritance.
3. Not accepting or accessing injury settlements.
4. Diverting tort settlements into a trust or similar device.

14.2.1 Divestment (cont.)

5. Refusing to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony.

6. Refusing to take action to claim the statutorily required portion of a deceased spouse's or parent's estate. Count the action as a divestment only if:

   a. The value of the abandoned portion is clearly identified, **and**

   b. There is certainty that a legal claim action will be successful.

This includes situations in which the will of the institutionalized person's spouse precludes any inheritance for the institutionalized person. Under Wisconsin law, a person is entitled to a portion of his/her spouse's estate. If the institutionalized person does not contest his/her spouse's will in this instance, the inaction may be divestment.

14.2.2 Transfer

"Transfer" is the act of changing the legal title or other right of ownership to another person. Converting an asset from one form to another is not divestment. For example, buying a race horse for $12,000 and keeping the race horse is not divestment.

14.2.2.1 Date of Transfer

If the MA client has transferred real property, such as a homestead, the official date of transfer is the date the Quit Claim Deed was signed. It is not the date the transfer was recorded with the county Register of Deeds.

Example. When Mrs. Puzo entered a nursing home and applied for MA on September 15, 1997, she indicated that she had divested her homestead to a nephew. When questioned about the date, she said it was about three years ago. The ES worker called the county Register of Deeds. She learned that the transfer was recorded on September 1, 1994. This was within the 36 month lookback period. Fearing that Mrs. Puzo might be subject to a divestment penalty, the ES worker asked when the Quit Claim Deed was signed. It was signed August 1, 1994, which was before the 36-month lookback period began. Therefore, Mrs. Puzo was not subject to a divestment penalty.

14.2.3 Nonexempt Assets

"Nonexempt assets" are those that are counted in the MA AFDC-related and SSI-related financial units. Assets that aren't counted in these units are called exempt assets. An available asset (11.1.0) can be either exempt or nonexempt.

14.2.3.1 Homestead Property

Homestead property, usually an exempt asset, is given special consideration in the MA divestment policy. Homestead divestments are permitted only under the circumstances described in 14.4.0, #7.

14.2.4 Institutionalized Person

See 10.4.0.

14.2.5 Community Spouse

See 23.2.1.

14.2.6 Fair Market Value

"Fair market value" is an estimate of the prevailing price an asset would have had if it had been sold on the open market at the time it was transferred.

14.2.7 Divested Amount

"Divested amount" is the net market value minus the value received.

14.2.8 Net Market Value

"Net market value" is the fair market value at the time of the transfer minus any outstanding loans, mortgages, or other encumbrances on the property.

14.2.9 Value Received

"Value received" is the amount of money or value of any property or services received in return for the person's property. The value received may be in any of the following forms:

1. Cash.

2. Other assets such as accounts receivable and promissory notes (both of which must be valid and collectible to be of value), stocks, bonds, and both land contracts and life estates which are evaluated over an extended time period.

3. Discharge of a debt.

14.2.9 Value Received (cont.)

4. Prepayment of a bona fide and irrevocable contract such as a mortgage, shelter lease, loan, or prepayment of taxes.

5. Services which shall be assigned a valuation equal to the cost of purchase on the open market. Assume that services and accommodations provided to each other by family members or other relatives were free of charge, unless there exists a written contract (made prior to the date of transfer) for payment.

14.2.10 Unavailability

If an MA client or his/her spouse uses an asset in a way that makes it unavailable **and** doesn't receive FMV, treat that asset as divestment. An example is using an asset as collateral for someone else's loan.

14.3.0 Lookback Period

The lookback period is a period of time prior to application or entry into an institution. A divestment that has occurred in the lookback period or any time thereafter can cause the applicant or recipient to be ineligible.

The lookback period for divestments not involving trusts is 36 months. Look back 36 months from the:

1. Institutionalized person's date of application or review, or
2. MA recipient's date of entry into the institution.

The lookback period for divestments involving trusts is 60 months from the date of application, review or entry into an institution.

When you count backward, start counting with the month **before** the date of application or of entry into the institution as month 1. When determining which date to use, use the most recent date.

"Date of application" is the date the applicant or his/her representative (IMM I-A, 28.1.0) signs the application. If s/he does not sign the application, it is not a complete application and no divestment penalty can be imposed.

14.4.0 Exceptions

A divestment that occurred in the lookback period or any time after does not affect eligibility if any of the following exceptions apply:

1. The person who divested shows that the divestment wasn't made with the intent of receiving MA.

14.4.0 Exceptions (cont.)

The person must present evidence that shows the specific purpose and reason for making the transfer. Verbal assurances that s/he was not trying to become financially eligible for Medicaid are not sufficient. S/he must show that s/he expected private health insurance or other resources would cover his/her institutional expenses. Take into consideration statements from physicians, insurance agents, insurance documents, and bank records that confirm the person's statements.

2. The community spouse divested assets that were part of the community spouse asset share.

   a. After the institutionalized person is determined eligible, the community spouse can divest assets that are part of the community spouse asset share (23.4.2). S/he can give them to anyone without affecting the eligibility of the institutionalized spouse.

   Example. When Ralph went into a nursing home and applied for MA, Edith’s community spouse asset share was $42,000. After Ralph became eligible, Edith gave $30,000 of the community spouse asset share to a favorite nephew. This divestment did not affect Ralph’s eligibility. Edith is allowed to divest all or any part of the community spouse asset share.

   b. If the community spouse receives assets from the eligible institutionalized spouse that were **not** part of the community spouse asset share, s/he cannot give them to anyone except persons listed in 14.4.0, #8. Giving them to someone other than these persons could cause the institutionalized person to become ineligible.

   Example. Ralph is an institutionalized MA recipient. He recently inherited $25,000, and immediately transferred it to Edith, his community spouse. This $25,000 is not part of the community spouse asset share. Therefore, Edith cannot transfer the money to anyone except “a child of any age of either spouse who is either blind or permanently and totally disabled or both” (14.4.0, #8). If she transfers it to anyone else, Ralph's eligibility for institutional services may be affected.

14.4.0 Exceptions (cont)

Homestead property is an exception. After the institutionalized person has become eligible, s/he can transfer the homestead to the community spouse, and the community spouse can transfer it to anyone. The community spouse's divestment of homestead property after the institutionalized person has become eligible, does not affect the institutionalized person's eligibility.

Example. When Ralph applied for institutional MA, he and Edith owned a home together. Homestead property is not counted as part of the community spouse asset share. After Ralph became eligible, he signed his 1/2 share of the home over to Edith. Edith can divest the part of the homestead which Ralph gave to her without affecting Ralph's eligibility.

c. If the community spouse has assets that were **not** part of the community spouse asset share and that the eligible institutionalized spouse did **not** give to her, she can give them to anyone. Her divestment will not affect the institutionalized spouse's eligibility.

Example. After Ralph entered the nursing home and became eligible for MA, Edith inherited $12,000 from a favorite uncle. She gave it to a favorite nephew. This divestment does not affect George's eligibility because the money, even though not part of the community spouse asset share, did not come from Ralph.

Note: While these examples show that in some circumstances the community spouse's divestments don't affect the institutionalized person's eligibility, they may affect the community spouse's eligibility if s/he later enters an institution and applies for MA.

3. The ownership of the property is returned to the person in the fiscal group who originally disposed of it.

4. Division of property as part of a divorce or separation action, and loss of property due to foreclosure or repossession aren't divestment.

5. The person intended to dispose of the asset either at fair market value or other valuable consideration.

14.4.0 Exceptions (cont.)

> **Example**. Gary had a lucky 3-cent postage stamp that he carried in his wallet. A friend admired it, so Gary sold it to him for $0.03, unaware that it was worth more. The friend sold it to a stamp dealer for $7300. When Gary applies for MA, this divestment will be disregarded.

6. The agency determines that denial of eligibility would work undue hardship on the person. "Undue hardship" is a serious impairment to the institutionalized person's immediate health.

   The ESS must verbally inform the person of this undue hardship provision if the ESS has determined the person has divested. The undue hardship notice must be included on all manual MA institution denials and closures due to divestment.

7. The institutionalized person or his/her spouse divests **homestead** property to his/her:

   a. Spouse.

   b. Child who meets at least 1 of the following conditions:

      (1) Under 21 years of age
      (2) Blind
      (3) Permanently & totally disabled

   c. Sibling who:

      (1) Was residing in the institutionalized person's home for at least 1 year immediately before the date the person became institutionalized.

      Verify that the sibling was residing in the institutionalized person's home for at least 1 year immediately before the person became institutionalized. Don't require a specific type of verification. Some examples of verification are written statements from nonrelatives, social services records, tax records, and utility bills with the address and the sibling's name on them.

      (2) Has a verified equity interest in the home.

      "Equity interest" means an ownership interest in a homestead.

14.4.0 Exceptions (cont.)

Ask to see a copy of the deed or the land contract or some other document to verify the sibling's equity interest in the homestead. Since the sibling's name on the document is not sole proof, you may need to require other documentation such as canceled checks and receipts.

d. A minor or adult child of the institutionalized person. The child must have:

(1) Been residing in the person's home for at least 2 years immediately before the person became institutionalized, **and**

(2) Provided care to him/her which permitted him/her to reside at home rather than in the institution, or which permitted him/her to avoid becoming a community waivers participant. This care must have been provided for the entire 2 years immediately before the person became institutionalized. Get a notarized statement that the person was able to remain in his/her home because of the care provided by the child.

The statement must be from his/her physician or from someone else who has personal knowledge of his/her living circumstances. A notarized statement from the child does not satisfy these requirements.

8. The institutionalized person or his/her community spouse divests a nonhomestead asset or assets to:

a. Spouse.

b. A child of any age of either spouse who is either blind or permanently and totally disabled or both.

14.5.0 Penalty Period

If there was a divestment during the lookback period or any time after, and if none of the above exceptions apply, the institutionalized person must be determined ineligible for a period of time.

During this penalty period Medicaid will not pay the institutionalized person's daily care rate in the nursing home or in community waivers. S/he may, however, still be eligible for MA card services (14.14.0).

14.5.0 Penalty Period (cont.)

The penalty period begins with the month of divestment and extends for the number of months that result from dividing the divested amount (14.2.7) by the average nursing home cost to a private pay patient ($4,542).

Round all fractions downward. For example, 8.6 = 8 months, .7 = 0 months.

Example. Jeff transfers $80,816 in cash, CDs, and stocks to The Green Tree Brethren, Inc. $80,816 divided by $4,542 is 17.79. Jeff is ineligible for 17 months.

14.6.0 Multiple Divestments

Multiple divestments are two or more separate divestments made within a 36-month period before the MA application date or the date of entering an institution or at any time thereafter.

For multiple divestments:

1. Add together all the divested amounts of tranfers in the lookback period or any time thereafter that are connected in any of the following ways:

   a. Transfers that occur in the same month.

   b. Transfers that occur in both months of a period of any two consecutive months.

   c. Transfers with a penalty period (14.5.0) that extends into a month in which there is another transfer.

   d. Transfers with a penalty period (14.5.0) that extends into the month immediately preceding a month in which there is another transfer.

2. Calculate the penalty period (14.5.0).

14.6.0 Multiple Divestments (cont.)

Example. Ernie enters a nursing home and applies for MA in July 1994. In the 36-month lookback period he made the following transfers:

11-1-93	$20,000 cash to a friend
4-1-94	$5,000 bond to grandson
5-1-94	$5,000 bond to grandson
6-1-94	$5,000 bond to grandson
7-1-94	$5,000 bond to grandson

The 11-1-93 transfer has a penalty period of five months. Since it goes to 3-31-94, it extends into the month that immediately precedes the month of another transfer, the 4-1-94 transfer. Each of the later transfers, the 4-1-94, 5-1-94, and 6-1-94, occur in consecutive months. Therefore, add together all of the divested amounts from 11-1-93 through 7-1-94 to calculate the penalty period.

If there are transfers in the lookback period which are not connected in any of the ways described above, treat them as separate and calculate a separate penalty period (14.5.0) for each.

14.7.0 Jointly Held Assets

When an institutionalized person owns an asset in common with another person and when s/he or the other person or any person acting on their behalf transfers the asset during the lookback period or anytime thereafter, s/he may be penalized for divestment if the transfer:

1. Reduces or eliminates the institutionalized person's ownership or control of the asset, or

2. Limits the institutionalized person's right to sell or otherwise dispose of the asset.

"Holding an asset in common" means holding it through joint tenancy, tenancy in common, joint ownership, or partnership.

Example. For many years Debra held a joint account with her daughter, Donna. On October 15, 1996, Donna withdraws $13,000 from it. On December 3, 1996, Debra enters a nursing home and applies for MA. The $13,000 withdrawal is a divestment. A penalty period must be calculated and imposed.

14.7.0 Jointly Owned Assets (cont.)

Example. George bought a piece of property with his nephew, Carl. Three months later George requested to participate in the community waivers program. George explained that his nephew, Carl, refused to sell the property and, therefore, it was unavailable and should not be counted as an asset. The ESS agreed with George that the land wasn't available and wouldn't be counted as an asset. But the purchase of the property and the nephew's refusal to make it available (through liquidation) to meet George' needs was divestment. Therefore, George is subject to a penalty period starting from the 1st of the month in which the joint owner, Carl, refused to sell the property

When a person's name appears as co-owner of a jointly held asset, assume s/he is part owner of the property. However, you must inform him/her that s/he has a right to present evidence showing she is not an owner (11.3.2).

14.8.0 Divesting by Paying Relatives

It is divestment when an institutionalized person transfers resources to a relative in payment for care or services the relative provided to him/her. A relative is anyone related to the institutionalized person by blood, marriage, or adoption.

Count all the payments for care and services which the institutionalized person made to the relative in the last 36 months. The form of payment includes cash, property, or anything of value transferred to the relative. It is not divestment if all of the following conditions exist

1. The services directly benefited the institutionalized person.

2. The payment did not exceed reasonable compensation for the services provided.

   "Reasonable compensation" is the prevailing local market rate for the service at the time the service is provided.

Example. Ms. Rain applies for community waivers on 1-10-95. She paid her son $3,500 to remodel her bathroom the previous month. She shows that her son installed new tile and fixtures. You check with a local contractor who estimates the he would charge $4,000 for the same job. Since Ms. Rain received FMV, it's not divestment.

14.8.0 Divesting by Paying Relatives (cont.)

Example. Ms. M enters a nursing home on 12-12-95 and applies for MA. She reports she paid her daughter $7,000 in December for coming to her house each evening and fixing dinner for the previous 2 months. You check with a local agency that provides meals to homebound persons. They charge $2 for each meal. Ms. M's daughter provided 61 meals. The fair market value of the meals was $122. You determine Ms. M overpaid her daughter. The divested amount is $6,878 ($7000-$122).

3. If the amount of total payment exceeds 10% of the community spouse asset share (23.4.2), the institutionalized person must have a written, notarized agreement with the relative. The agreement must:

   a. Specify the service and the amount to be paid, and
   b. Exist at the time the service is provided.

Example. Ms. A enters a nursing home and applies for MA on 11-1-96. When asked if she has transferred any assets in the past 36 months, she reveals that she has. She paid her daughter $10,000 in exchange for personal care which her daughter had provided to her the past 2 years. This $10,000 payment would ordinarily be counted as a divestment, since it is above 10% of Ms. A’s community spouse asset share.

But she shows you a written, notarized statement, dated 10-09-94, in which she promises to pay $10,000 to her daughter for the specified care. Therefore, there is no divestment.

If there is no community spouse, use 10% of the highest possible CSAS in 23.4.2.

14.8.1 Room & Board

If an institutionalized person has made room & board payments to a relative, disregard them if:

1. The payments do not exceed fair market value of the room & board, and
2. Are for periods when the institutionalized person was receiving the room & board.

If the room & board is paid after the person has been institutionalized, treat the payment as divestment unless:

1. The payment is only for the month immediately preceding the month s/he entered the institution, or

2. S/he provides a written lease that existed during the time s/he was receiving room & board from the relative.

14.9.0 Income Divestment

Income received by an institutionalized person and transferred in the month of receipt is considered divestment.

> **Example**. Mr. M. resides in a nursing home. He receives a pension check of $3,000 a month. Mr. M. immediately signs the check over to his son. This is a divestment.

Unless there is reason to believe otherwise, assume that ordinary household income was legitimately spent on the normal costs of living.

However, there may be divestment if the person transferred amounts of regularly scheduled income which s/he ordinarily would have received. Such a transfer usually takes the form of a transfer of the right to receive income.

When you find the institutionalized person has transferred income or the right to receive income, calculate a penalty period based on the total amount of income transferred.

> **Example**. Donald transfers his rights to his $325,000 pension to his daughter. The divested amount is $325,000, not the $4,500 the daughter expects to receive each month from the pension.

14.10.0 Life Estates

When a person conveys a life estate (11.8.1.5) to himself/herself and designates a remainder person (11.8.1.5), the amount of remainder interest is considered an asset transfer. If the transfer was for less than fair market value, treat it as a divestment.

> **Example**. Mrs. W., age 82, conveys her home into a life estate. She holds the life estate, and the remainder person is her son. Within 36 months she enters a nursing home and applies for MA. The home's fair market value was $67,500. Mrs. W. received no payment from her son, the remainder person. The divested amount is $40,300.86 ($67,500 x .59705).

It is also divestment if the life estate holder transfers the life estate interest for less than fair market value.

14.10.0 Life Estates (cont.)

> **Example**. Jim conveyed his home into a life estate 12 years ago. Now he wants to enter an institution and get MA. So he gives the life estate to his friend Barney, the remainder person, and receives no compensation in return. This is a divestment. What is the divested amount? The home's fair market value is $125,000. Jim is age 75 at the time of the divestment. The divested amount is $65,186 ($125,000 x .52149).

14.10.1 Jointly Owned

To determine the value of an individual's share of a jointly owned life estate which was divested:

1. Divide the home's fair market value (FMV) by the number of owners.
2. Go to 30.2.0 and get the life estate figure which corresponds with each person's age.
3. Multiply the life estate figure for each person by their share of the FMV.
4. Add the results together for each person who divested.

Use the value of the home and age of the person when the home was sold or given away.

> **Example.** A husband and wife give away their life estate. The home's FMV is $50,000. He is 73. She is 67. Half of $50,000 is $25,000.
>
> (73) .55571 x $25,000= $13,892.75
> (67) .65098 x $25,000= + $16,274.50
> $30,167.25
>
> $30,167.25 is the value of the life estate.

14.11.0 Annuities

It is divestment if an institutionalized person transfers assets or income to an annuity (11.7.4) when any of the following conditions exist:

1. S/he chooses a settlement option that has a pay-out schedule extending beyond his/her life expectancy.

   The divested amount is the total of all payments scheduled after the month in which the person's age exceeds his/her life expectancy.

   Determine the person's life expectancy as follows:

   a. Find his/her age on the date s/he chose the settlement option.

14.11.0 Annuities (cont.)

b. Consult 30.10.0 for his/her life expectancy.

Example. A 76-year-old man purchases an annuity and chooses a settlement option on January 1, 1994. The annuity will make $100 payments to him beginning January 1, 1994 and ending December 31, 2010. His life expectancy is age 86. He will turn 87 on December 1, 2004. Total the payments from January 1, 2005 through December 31, 2010. The total is the divested amount.

The life expectancy value can be adjusted based on a medical condition diagnosed by a physician before the person transferred funds to the annuity or trust.

2. S/he purchases an annuity that has no cash or surrender value, and s/he does not choose a settlement option.

   The divested amount is the amount the institutionalized person paid for the annuity. (If there is a cash or surrender value, count it as an available asset.)

3. S/he purchases an annuity in which neither s/he nor his/her spouse nor a blind or permanently disabled child of any age of either spouse is named the annuitant.

4. S/he purchases an annuity in which there are not fixed, periodic payments made within his/her life expectancy.

14.12.0 Promissory Notes

It is divestment if an institutionalized person signs a promissory note that has one of the following:

- A provision that forgives a portion of the principal.
- A balloon payment.
- Interest payments only, with no principal payments.
- An inadequate interest rate (relative to current market rates) at the time the promissory note was signed.

14.13.0 Trusts

"Trust" is any arrangement in which a person (the "grantor") transfers property to another person with the intention that that person (the "trustee") hold, manage, or administer the property for the benefit of the grantor or of someone designated by the grantor (the "beneficiary"). The term “trust” includes any legal instrument or device that is similar to a trust.

14.13.0 Trusts (cont.)

"Legal instrument or device similar to a trust" means any legal instrument, device, or arrangement which, even though not called a trust under state law, has the same attributes as a trust. That is, the grantor transfers property to the trustee and the grantor's intention is that the trustee hold, manage, or administer the property for the benefit of the grantor or of the beneficiary.

"Grantor" may be:

1. The MA client.
2. His/her spouse.
3. A person, including a court or an administrative body, with legal authority to act in place of or on behalf of the client or his/her spouse. This includes a power of attorney or a guardian.
4. A person, including a court or an administrative body, acting at the direction or upon the request of the client or his/her spouse. This includes relatives, friends, volunteers or authorized representatives.

14.13.1 Revocable Trusts

A revocable trust is a trust that can be revoked, canceled or modified by the grantor or by a court. A trust which is called irrevocable, but which will terminate if some action is taken by the grantor, is considered a revocable trust.

1. The trust principal of a revocable trust is an available **asset**. "Trust principal" is the amount placed in trust by the grantor plus any trust earnings paid into the trust and left to accumulate.
2. All payments from the trust to or for the benefit of the institutionalized person are **income**.
3. All payments from the trust that are not to or for the benefit of the institutionalized person are **divestment**.

14.13.2 Irrevocable Trusts

An irrevocable trust is a trust that cannot, in any way, be revoked by the grantor.

The following actions are divestment if they took place during the lookback period or any time after:

14.13.2 Irrevocable Trusts (cont.)

1. An irrevocable trust was created. The **divested amount** is the total amount of the created trust.

   Sometimes revocable trusts contain a clause that causes them to become irrevocable at a later date in the life of the trust. Divestment occurs on the date the trust changed from revocable to irrevocable.

   Example. In 1988 Benny created a revocable trust fund of $100,000 for his daughter. There was a clause in the trust stating the trust would become irrevocable if Benny became incompetent. He was determined incompetent on February 2, 1997, and the trust changed from revocable to irrevocable. Benny entered an institution and applied for MA in July, 1998. He divested the total amount of the trust on February 2, 1997.

2. Funds were added to the irrevocable trust. The **divested amount** is the amount of the added funds.

If either of these actions took place **before the lookback period**, apply the following rules:

1. Payments to the institutionalized person from trust income or from the body of the trust are **income**.

2. Payments that could be disbursed to the institutionalized person from trust income or from any portion of the body of the trust but that are not disbursed are available **assets**.

3. Payments from the trust to anyone other than the institutionalized person are **divestment**.

14.13.3 Exceptions

The policies described in this trusts section do not apply to any of the following trusts.

1. Annuities (14.11.0).
2. Irrevocable burial trusts (11.5.1).
3. Trusts established by a will.
4. Special Needs Trusts - A trust containing assets of an individual under age 65 who is totally and permanently disabled (under SSI program rules). Disregard the trust if it meets these conditions.

14.13.3 Exceptions (cont.)

a. The trust must be established for the sole benefit of the disabled person by his/her parent, grandparent, legal guardian or a court, **and**

b Contain a provision that, upon the death of the beneficiary, the Wisconsin MA program will receive all amounts remaining in the trust not in excess of the total amount of MA paid on behalf of the beneficiary.

The exception continues after the person turns 65, provided s/he continues to be disabled. However, a grantor cannot add to the trust after the beneficiary turns 65. Anything added to the trust after the beneficiary turns 65 is a divestment. Money added before the beneficiary turns 65 is not a divestment.

5. Pooled trusts. These are trusts for disabled persons as determined by SSI rules. Disregard them if they meet the following conditions:

   a. Established and managed by a non-profit association.

   b. A separate account is maintained for each beneficiary. For purposes of investment and management, the funds from separate accounts may be pooled together.

   c. The trust must be established for the sole benefit of the disabled person by his/her parent, grandparent, legal guardian or a court.

   d. Contain a provision stating that upon the death of the beneficiary the trust will use the funds remaining in the account to reimburse Wisconsin's MA program.

14.14.0 Both Spouses Institutionalized

If the community spouse made a divestment that resulted in a penalty period for the institutionalized spouse (see 14.4.0, 2.b), apportion the penalty period between the spouses at the time the community spouse enters an institution and applies for MA.

14.14.0 Both Spouses Institutionalized (cont.)

Example. Joe Penner is in a nursing home. Mrs. Penner is his community spouse. Joe inherited $84,000 and immediately transferred it to Mrs. Penner. This $84,000 was not part of the community spouse asset share. Mrs. Penner gave it to her church. This divestment resulted in a penalty period of 26 months for Joe Penner. Now Mrs. Penner is entering the nursing home and applying for MA. The time that remains on Joe Penner's penalty period must be apportioned to both spouses.

Apportion the penalty period as follows:

1. Find the divested amount that was used to calculate the original penalty period.

2. Calculate how much of the divested amount remains to be satisfied by:

   a. Multiplying the average nursing home private pay rate x the number of complete months of the penalty period already served, and

   b. Subtracting the result from the original divested amount.

3. Calculate the penalty period for the remaining divested amount.

4. Divide the new penalty period equally between the 2 spouses.

If either spouse leaves the institution or dies, add the remainder of his/her penalty period to the other spouse's penalty period.

14.15.0 MA Card Services

MA card services are all the MA covered services (24.0.0) except SNF/ICF payments and ancillary services (Wis. Ad. Code 107.09(2) and (4)(a). These excepted services consist of the routine, day-to-day health care services that are provided to MA recipients by a nursing home and that are reimbursed within the daily care rate.

14.15.1 Nursing Home Residents

A person who, because of divestment, isn't eligible for services reimbursed within the daily institutional care rate is still eligible for MA card services.

14.15.2 Community Waivers

Community waivers (CW) clients who have divested cannot receive CW benefits and can't use CW eligibility criteria.
They may be eligible for MA card services. Determine eligibility using regular MA methodology.

Send a notice to the CW case manager telling him/her of the client's ineligibility for waiver services.

14.16.0 Gambling

Gambling losses at a casino, racetrack or in some other type of regulated gambling is not divestment. It is divestment if the client makes personal bets with friends or relatives or has losses from unregulated gambling.